A

PP

v.

GAN KIAT BEND & ANOTHER CASE

B

SESSIONS COURT, KUALA LUMPUR
JAGJIT SINGH BANT SINGH SJ
[ARREST CASE NO: 62-49-05 & 62-183-05]
21 APRIL 2011

C ***CRIMINAL LAW:*** *Money laundering - Offences of money laundering - Section 4(1) Anti-Money Laundering Act 2001 - Wrongful gain from fraudulent sale and purchase of land - Whether accused received or used monies which were proceeds of unlawful activity - Whether there was commission of serious offences under ss. 465, 467, 471 and 420 Penal*
D *Code - Whether objective factual circumstance showed accused knew or had reason to believe monies were proceeds of unlawful activity - Whether elements of offence proved by prosecution - Whether defence failed to raise a reasonable doubt*

E ***CRIMINAL LAW:*** *Money laundering - Sentence - Sentencing considerations - Mitigating factors - Anti-Money Laundering Act 2001, s. 4(1)*

There were two cases before the sessions court judge in which both the accused were jointly tried on money laundering charges
F under s. 4(1) of the Anti-Money Laundering Act 2001 ('AMLA') (now known as the Anti-Money Laundering and Anti-Terrorism Financing Act 2001). The accused in the first case ('first accused') was said to have represented a landowner by the name of Boh Chin Chye ('BCC') who purportedly owned lots 22203 and
G 22204. The first accused had entered into a sale and purchase transaction of the said lots with a part time property broker ('SP6') who allegedly was working together with the accused in the second case ('second accused'). The said lots were purchased by SP6 and the second accused for RM2.5 million. Subsequently
H the said lots were sold for RM9 million to a company called B & G Intertrade. However, the said lots could not be transferred to the said company due to a fraud that was later discovered. The purchase price of RM9 million was banked into the account of a law firm called Syed Ibrahim & Co which had been approached
I by both the accused to deal with the sale and purchase of the

said lots. Syed Ibrahim & Co paid out RM8.4 million into SP6's current account with Standard Chartered Bank and retained the balance sum as its legal fees. SP6 testified that he had paid out a sum of money to both the accused upon their instructions and was left with a remaining sum of RM1.7 million out of which RM500,000 was utilized for settling his personal matters. The balance of RM1.2 million had been seized and frozen by the authorities. SP6 testified that both accused did not instruct him at any one time to pay BCC. The Director of Pejabat Tanah dan Galian Selangor ('PTG') testified that the manual title did not show BCC as the owner of the said lots although the computerised title of the said lots displayed BCC as the owner. The manual title in fact showed that lot 22203 was owned by a company called Rahim Enterprise Sdn Bhd whilst lot 22204 was jointly owned by one Tan Eye Teong, one Tan Lian Hua and a company called Improvest Sdn Bhd. There was no memorandum of transfer in Form 14A of the National Land Code to support any change of ownership in the said titles. The owners of the said lots had lodged police reports claiming that the said lots had been unlawfully transferred to BCC and that they had not entered into any transaction with BCC. That led to the cases against both the accused.

The issues that arose for determination was whether the three elements under s. 4(1) AMLA was proved to establish the commission of the offences by both accused: (1) whether they had received or used the monies; (2) whether the monies received or used were proceeds of an unlawful activity; and (3) whether it could be inferred from the objective factual circumstance that they knew or had reason to believe that the monies were proceeds from an unlawful activity.

Held (convicting and sentencing both accused):

(1) There was sufficient credible evidence to establish the first element of the offence, *ie*, the offending act of receiving or using the monies in all charges against both the accused. The movement of monies had been explained by SP6 and had been supported by the various witnesses and banking documents. Further, both the accused had not disputed it. (para 10)

(2) SP6 had been a credible witness and there was no reason to doubt that he had disbursed the monies from his Standard Chartered Bank account as instructed by the second accused. There was a danger of convicting both the accused based on SP6's evidence as he had been an accomplice but SP6 was found to be a truthful witness. (para 13)

(3) The evidence showed that the monies received or used by both accused had been proceeds of an unlawful activity. There had been overwhelming evidence of an offence of forgery under s. 465 or offence of forgery of a valuable security under s. 467 Penal Code. The computerised land titles of the said lots were false or forged compared to their original land titles. The falsification had caused loss to the rightful owners of the said lots. Further, the prosecution had also proved that BCC was not the rightful owner of the said lots. (paras 14, 22 & 23)

(4) Both accused had dishonestly used false or forged documents pertaining to the said lots as genuine so as to make a wrongful gain for themselves. The title to the said lots, being forged, fell within the term "false documents" under s. 470 Penal Code. The commission of a serious offence under s. 471 had been proved by the prosecution. The offence of cheating under s. 420 Penal Code had also been made out. (paras 24 & 26)

(5) The sequence of events showed that the money laundering offences were committed between November 2003 and January 2004. Section 467 Penal Code, however, was inserted as a serious offence on 30 September 2004 which brought into question the validity of the AMLA charges against both accused. Section 2 AMLA specifically allowed the application of "serious offence, unlawful activity or foreign serious offence whether committed before or after" the commencement of AMLA. AMLA too did not state that the prosecution must be instituted after the serious offence had been listed. To also contend that s. 467 did not apply to AMLA on the basis that it was not listed as a serious offence at the time the money laundering offences were committed would run counter to the purpose of AMLA as stated in its preamble. It followed that s. 467 Penal Code was applicable as a serious offence in relation to a charge under s. 4(1) AMLA. The AMLA charges also did not offend art. 7(1) of the Federal Constitution based on the relevant authorities. (para 28)

(6) The objective factual circumstances of the case showed that both accused knew or had reasons to believe that the titles to the said lots and the monetary proceeds arose from an unlawful activity. The first accused's investment was a mere RM30,000 but he made a profit of about RM 2.5 million within a few days. Further, the identity card of BCC contained the photograph of the first accused which was used in the land deal. That showed the participation or nexus of the first accused in the offence. In respect of the second accused, his actions in instructing Syed Ibrahim & Co to issue a cheque of RM150,000 and make a telegraphic transfer of RM1 million to his wife, to issue two cheques of RM1,333,000 and RM50,000 to his son, all showed that he had disguised the dirty money, cleaned it by putting it into the account of others before collecting the said monies from them. His actions fell within the three stages of money laundering, *ie*, placement, layering and integration. It showed his dishonest intentions. His repeated searches at the PTG were simply a cover up to show that he was doing the right thing when all along he knew that the titles to the said lots were the result of an unlawful activity. (paras 30, 31, 32, 33, 34 & 35)

(7) The prosecution witnesses were credible witnesses without any motive and thus their evidence was acceptable. On the other hand, the first accused appeared to be an untruthful witness as during examination in chief he could read and understand the documents referred to him but in cross-examination he pretended not to be able to read anything in English and Bahasa Melayu except for the numbers. Further, the first accused used BCC's name instead of his own as BCC was a simpleton. BCC's statement that he had never gone to Syed Ibrahim & Co's office and that he had not known of the use of his identity card for the transactions involving the said lots were accepted. (paras 43, 44, 46)

(8) The defence was a bare denial, illogical and an afterthought and failed to raise a reasonable doubt in the prosecution's case. As such both accused were found guilty of the charges and sentenced accordingly. (para 54)

(9) The total loss to the victims was around RM9 million. An order under s. 294 Criminal Procedure Code or a mere fine would not satisfy the aims of sentencing, namely, retribution, deterrence, rehabilitation and prevention. The fact that the first and second accused were 52 and 59 years of age respectively, had school going children, had parents who had passed on or of old age, had high blood pressure, had committed no previous offences and were sole breadwinners of their families were not mitigating factors to be taken into consideration. Both accused should have thought of all those factors before committing the offences. (para 66 & 67)

[Sentences of imprisonment to run concurrently, penalty ordered under s. 55(2) AMLA and ancillary order.]

Case(s) referred to:

Hoh Kiang Ngan v. Mahkamah Perusahaan Malaysia & Anor [1996] 4 CLJ 687 FC ***(refd)***

Jaafar Ali v. PP [1999] 1 CLJ 410 HC ***(refd)***

Kesultanan Pahang v. Sathask Realty Sdn Bhd [1998] 2 CLJ 559 FC ***(refd)***

Nothman v. Barnet London Borough Council [1978] 1 WLR 220 ***(refd)***

PP v. Mohd Radzi Abu Bakar [2006] 1 CLJ 457 FC ***(refd)***

PP v. V Alexander Chaco Varghese (And Another Case) [2010] 9 AMR 159 ***(refd)***

Legislation referred to:

Anti-Money Laundering Act 2001, ss. 2(1), 3(1), 4(1), (2), 55(2)

Criminal Procedure Code, ss. 283(1)(b)(iii), (iv), 294

Federal Constitution, art. 7(1)

Penal Code, ss. 23, 420, 465, 467, 470, 471

For the prosecution - Hazril Harun DPP

For the 1st & 2nd accused - Zeffree Zainudin; M/s Zeffree Azmi

Reported by Usha Thiagarajah

JUDGMENT

Jagjit Singh Bant Singh SJ:

[1] The accused Gan Kiat Bend ("first accused") in the case of 62-49-2005 claimed trial to the following four charges:

First charge

Bahawa kamu pada 9 Januari 2004 di Standard Chartered Bank Malaysia Berhad di No. 2, Jalan Ampang, Kuala Lumpur di dalam Wilayah Persekutuan Kuala Lumpur, telah melibatkan diri dalam pengubahan wang haram iaitu menerima wang hasil daripada aktiviti haram sebanyak RM2,000,000.00 (Ringgit Malaysia Dua Juta) melalui cek Standard Chartered Bank Malaysia Berhad, Jalan Ampang Kuala Lumpur, no. 500037 dari akaun bernombor 312-1-5710206-6 kepunyaan Syed Ahmad Fauzi bin Syed Abu Bakar No. KP: 700602-06-5387 dan oleh itu kamu telah melakukan satu kesalahan yang boleh dihukum di bawah seksyen 4(1) Akta Pencegahan Pengubahan Wang Haram 2001.

Second charge

Bahawa kamu pada 19 November 2003 di Standard Chartered Bank Malaysia Berhad di No. 2, Jalan Ampang, Kuala Lumpur di dalam Wilayah Persekutuan Kuala Lumpur, telah melibatkan diri dalam pengubahan wang haram iaitu menerima wang hasil daripada aktiviti haram sebanyak RM184,000.00 (Ringgit Malaysia Seratus Lapan Puluh Empat Ribu) melalui cek Standard Chartered Bank Malaysia Berhad, Jalan Ampang Kuala Lumpur, no. 5000002 dari akaun bernombor 312-1-5710206-6 kepunyaan Syed Ahmad Fauzi bin Syed Abu Bakar No. KP: 700602-06-5387 dan oleh itu kamu telah melakukan satu kesalahan yang boleh dihukum di bawah seksyen 4(1) Akta Pencegahan Pengubahan Wang Haram 2001.

Third charge

Bahawa kamu pada 6 Disember 2003 di Standard Chartered Bank Malaysia Berhad di No. 2, Jalan Ampang, Kuala Lumpur di dalam Wilayah Persekutuan Kuala Lumpur, telah melibatkan diri dalam pengubahan wang haram iaitu menerima wang hasil daripada aktiviti haram sebanyak RM10,000.00 (Ringgit Malaysia Sepuluh Ribu) melalui cek Standard Chartered Bank Malaysia Berhad, Jalan Ampang Kuala Lumpur, no. 500017 dari akaun bernombor 312-1-5710206-6 kepunyaan Syed Ahmad Fauzi bin Syed Abu Bakar No. KP: 700602-06-5387 dan oleh itu kamu telah melakukan satu kesalahan yang boleh dihukum di bawah seksyen 4(1) Akta Pencegahan Pengubahan Wang Haram 2001.

Fourth charge

Bahawa kamu pada 5 Januari 2004 di Standard Chartered Bank Malaysia Berhad di No. 2, Jalan Ampang, Kuala Lumpur di dalam Wilayah Persekutuan Kuala Lumpur, telah melibatkan diri dalam pengubahan wang haram iaitu menerima wang hasil daripada

aktiviti haram sebanyak RM240,000.00 (Ringgit Malaysia Dua Ratus Empat Puluh Ribu) melalui cek Standard Chartered Bank Malaysia Berhad, Jalan Ampang, Kuala Lumpur, no. 5000024 dari akaun bernombor 312-1-5710206-6 kepunyaan Syed Ahmad Fauzi bin Syed Abu Bakar No. KP: 700602-06-5387 dan oleh itu kamu telah melakukan satu kesalahan yang boleh dihukum di bawah seksyen 4(1) Akta Pencegahan Pengubahan Wang Haram 2001.

[2] The accused Ismail bin Husin ("second accused") in the case 62-183-2005 claimed trial to the following twelve charges:

First charge

Bahawa kamu pada 20 November 2003 di Standard Chartered Bank Malaysia Berhad di No. 2, Jalan Ampang, Kuala Lumpur di dalam Wilayah Persekutuan Kuala Lumpur, telah melibatkan diri dalam pengubahan wang haram iaitu menerima wang hasil daripada aktiviti haram sebanyak RM50,000.00 (Ringgit Malaysia Lima Puluh Ribu) melalui cek Standard Chartered Bank Malaysia Berhad, Jalan Ampang Kuala Lumpur, no. 500004 dari akaun bernombor 312-1-5710206-6 kepunyaan Syed Ahmad Fauzi bin Syed Abu Bakar No. KP: 700602-06-5387 dan oleh itu kamu telah melakukan satu kesalahan yang boleh dihukum di bawah seksyen 4(1) Akta Pencegahan Pengubahan Wang Haram 2001.

Second charge

Bahawa kamu pada 19 November 2003 di Standard Chartered Bank Malaysia Berhad di no. 2, Jalan Ampang, Kuala Lumpur di dalam Wilayah Persekutuan Kuala Lumpur, telah melibatkan diri dalam pengubahan wang haram iaitu menggunakan wang hasil daripada aktiviti haram sebanyak RM20,000.00 (Ringgit Malaysia Dua Puluh Ribu) melalui cek Standard Chartered Bank Malaysia Berhad, Jalan Ampang Kuala Lumpur, no. 500005 dari akaun bernombor 312-1-5710206-6 kepunyaan Syed Ahmad Fauzi bin Syed Abu Bakar No. KP: 700602-06-5387 dan oleh itu kamu telah melakukan satu kesalahan yang boleh dihukum di bawah seksyen 4(1) Akta Pencegahan Pengubahan Wang Haram 2001.

Third charge

Bahawa kamu pada 19 November 2003 di Standard Chartered Bank Malaysia Berhad di no. 2, Jalan Ampang, Kuala Lumpur di dalam Wilayah Persekutuan Kuala Lumpur, telah melibatkan diri dalam pengubahan wang haram iaitu menggunakan wang hasil daripada aktiviti haram sebanyak RM20,000.00 (Ringgit Malaysia Dua Puluh Ribu) melalui cek Standard Chartered Bank Malaysia

Berhad, Jalan Ampang Kuala Lumpur, no. 500006 dari akaun bernombor 312-1-5710206-6 kepunyaan Syed Ahmad Fauzi bin Syed Abu Bakar No. KP: 700602-06-5387 dan oleh itu kamu telah melakukan satu kesalahan yang boleh dihukum di bawah seksyen 4(1) Akta Pencegahan Pengubahan Wang Haram 2001.

Fourth charge

Bahawa kamu pada 19 November 2003 di Standard Chartered Bank Malaysia Berhad di no. 2, Jalan Ampang, Kuala Lumpur di dalam Wilayah Persekutuan Kuala Lumpur, telah melibatkan diri dalam pengubahan wang haram iaitu menggunakan wang hasil daripada aktiviti haram sebanyak RM150,000.00 (Ringgit Malaysia Seratus Lima Puluh Ribu) melalui cek Standard Chartered Bank Malaysia Berhad, Jalan Ampang Kuala Lumpur, no. 500008 dari akaun bernombor 312-1-5710206-6 kepunyaan Syed Ahmad Fauzi bin Syed Abu Bakar No. KP: 700602-06-5387 dan oleh itu kamu telah melakukan satu kesalahan yang boleh dihukum di bawah seksyen 4(1) Akta Pencegahan Pengubahan Wang Haram 2001.

Fifth charge

Bahawa kamu pada 6 Januari 2004 di Standard Chartered Bank Malaysia Berhad di no. 2, Jalan Ampang, Kuala Lumpur di dalam Wilayah Persekutuan Kuala Lumpur, telah melibatkan diri dalam pengubahan wang haram iaitu menggunakan wang hasil daripada aktiviti haram sebanyak RM15,000.00 (Ringgit Malaysia Lima Belas Ribu) melalui cek Standard Chartered Bank Malaysia Berhad, Jalan Ampang Kuala Lumpur, no. 500029 dari akaun bernombor 312-1-5710206-6 kepunyaan Syed Ahmad Fauzi bin Syed Abu Bakar No. KP: 700602-06-5387 dan oleh itu kamu telah melakukan satu kesalahan yang boleh dihukum di bawah seksyen 4(1) Akta Pencegahan Pengubahan Wang Haram 2001.

Sixth charge

Bahawa kamu pada 6 Januari 2004 di Standard Chartered Bank Malaysia Berhad di no. 2, Jalan Ampang, Kuala Lumpur di dalam Wilayah Persekutuan Kuala Lumpur, telah melibatkan diri dalam pengubahan wang haram iaitu menggunakan wang hasil daripada aktiviti haram sebanyak RM15,000.00 (Ringgit Malaysia Lima Belas Ribu) melalui cek Standard Chartered Bank Malaysia Berhad, Jalan Ampang Kuala Lumpur, no. 500030 dari akaun bernombor 312-1-5710206-6 kepunyaan Syed Ahmad Fauzi bin Syed Abu Bakar No. KP: 700602-06-5387 dan oleh itu kamu telah melakukan satu kesalahan yang boleh dihukum di bawah seksyen 4(1) Akta Pencegahan Pengubahan Wang Haram 2001.

Seventh charge

Bahawa kamu pada 5 Januari 2004 di Standard Chartered Bank Malaysia Berhad di no. 2, Jalan Ampang, Kuala Lumpur di dalam Wilayah Persekutuan Kuala Lumpur, telah melibatkan diri dalam pengubahan wang haram iaitu menggunakan wang hasil daripada aktiviti haram sebanyak RM20,000.00 (Ringgit Malaysia Dua Puluh Ribu) melalui cek Standard Chartered Bank Malaysia Berhad, Jalan Ampang Kuala Lumpur, no. 500031 dari akaun bernombor 312-1-5710206-6 kepunyaan Syed Ahmad Fauzi bin Syed Abu Bakar No. KP: 700602-06-5387 dan oleh itu kamu telah melakukan satu kesalahan yang boleh dihukum di bawah seksyen 4(1) Akta Pencegahan Pengubahan Wang Haram 2001.

Eighth charge

Bahawa kamu pada 5 Januari 2004 di Standard Chartered Bank Malaysia Berhad di no. 2, Jalan Ampang, Kuala Lumpur di dalam Wilayah Persekutuan Kuala Lumpur, telah melibatkan diri dalam pengubahan wang haram iaitu menggunakan wang hasil daripada aktiviti haram sebanyak RM100,000.00 (Ringgit Malaysia Seratus Ribu) melalui cek Standard Chartered Bank Malaysia Berhad, Jalan Ampang Kuala Lumpur, no. 500032 dari akaun bernombor 312-1-5710206-6 kepunyaan Syed Ahmad Fauzi bin Syed Abu Bakar No. KP: 700602-06-5387 dan oleh itu kamu telah melakukan satu kesalahan yang boleh dihukum di bawah seksyen 4(1) Akta Pencegahan Pengubahan Wang Haram 2001.

Ninth charge

Bahawa kamu pada 9 Januari 2004 di Standard Chartered Bank Malaysia Berhad di no. 2, Jalan Ampang, Kuala Lumpur di dalam Wilayah Persekutuan Kuala Lumpur, telah melibatkan diri dalam pengubahan wang haram iaitu menggunakan wang hasil daripada aktiviti haram sebanyak RM1,330,000.00 (Ringgit Malaysia Satu Juta Tiga Ratus Tiga Puluh Ribu) melalui cek Standard Chartered Bank Malaysia Berhad, Jalan Ampang Kuala Lumpur, no. 500035 dari akaun bernombor 312-1-5710206-6 kepunyaan Syed Ahmad Fauzi bin Syed Abu Bakar No. KP: 700602-06-5387 dan oleh itu kamu telah melakukan satu kesalahan yang boleh dihukum di bawah seksyen 4(1) Akta Pencegahan Pengubahan Wang Haram 2001.

Tenth charge

Bahawa kamu pada 9 Januari 2004 di Standard Chartered Bank Malaysia Berhad di no. 2, Jalan Ampang, Kuala Lumpur di dalam Wilayah Persekutuan Kuala Lumpur, telah melibatkan diri dalam pengubahan wang haram iaitu menggunakan wang hasil daripada

aktiviti haram sebanyak RM1,000,000.00 (Ringgit Malaysia Satu Juta) melalui cek Standard Chartered Bank Malaysia Berhad, Jalan Ampang Kuala Lumpur, no. 500035 dari akaun bernombor 312-1-5710206-6 kepunyaan Syed Ahmad Fauzi bin Syed Abu Bakar No. KP: 700602-06-5387 dan oleh itu kamu telah melakukan satu kesalahan yang boleh dihukum di bawah seksyen 4(1) Akta Pencegahan Pengubahan Wang Haram 2001.

Eleventh charge

Bahawa kamu pada 9 Januari 2004 di Standard Chartered Bank Malaysia Berhad di no. 2, Jalan Ampang, Kuala Lumpur di dalam Wilayah Persekutuan Kuala Lumpur, telah melibatkan diri dalam pengubahan wang haram iaitu menggunakan wang hasil daripada aktiviti haram sebanyak RM120,000.00 (Ringgit Malaysia Seratus Dua Puluh Ribu) melalui cek Standard Chartered Bank Malaysia Berhad, Jalan Ampang Kuala Lumpur, no. 500036 dari akaun bernombor 312-1-5710206-6 kepunyaan Syed Ahmad Fauzi bin Syed Abu Bakar No. KP: 700602-06-5387 dan oleh itu kamu telah melakukan satu kesalahan yang boleh dihukum di bawah seksyen 4(1) Akta Pencegahan Pengubahan Wang Haram 2001.

Twelfth charge

Bahawa kamu pada 13 Januari 2004 di Standard Chartered Bank Malaysia Berhad di no. 2, Jalan Ampang, Kuala Lumpur di dalam Wilayah Persekutuan Kuala Lumpur, telah melibatkan diri dalam pengubahan wang haram iaitu menggunakan wang hasil daripada aktiviti haram sebanyak RM11,500.00 (Ringgit Malaysia Sebelas Ribu Lima Ratus) melalui cek Standard Chartered Bank Malaysia Berhad, Jalan Ampang Kuala Lumpur, no. 500039 dari akaun bernombor 312-1-5710206-6 kepunyaan Syed Ahmad Fauzi bin Syed Abu Bakar No. KP: 700602-06-5387 dan oleh itu kamu telah melakukan satu kesalahan yang boleh dihukum di bawah seksyen 4(1) Akta Pencegahan Pengubahan Wang Haram 2001.

[3] Both the first accused and the second accused (jointly referred to as "both the accused") and all the charges were tried jointly.

Prosecution's Case

[4] The prosecution called 25 witnesses to prove the sixteen charges against both the accused. The evidence disclosed briefly is as follows:

A (a) Azlinda binti Azman (SP1) a Deputy Registrar at Pejabat Tanah dan Galian Selangor (PTG) at the material time testified that the registered owner in the manual title of Lot 22203 (exh. P4) is Rahim Enterprise Sdn Bhd. However the computerized title of the Lot 22203 (28191) (exh. P3) B showed Boh Chin Chye as the registered owner. SP3 explained that the change of ownership from Rahim Enterprise Sdn Bhd to Boh Chin Chye is not supported by any transfer document such as the Memorandum of Transfer in Form 14A and as such the transfer is wrongful;

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(b) For Lot 22204, SP1 confirmed that the registered owners in manual title are Tan Eye Teong (SP2), Tan Lian Hua and Improvest Sdn Bhd (exh. P6), however the computerized title of Lot 22204 (28192) (exh. P5) shows Boh Chin Chye as the D registered owner. Again SP1 confirmed that the change of ownership is not supported by any transfer document such as the Memorandum of Transfer in Form 14A and as such the transfer is wrongful. (For convenience both Lot 22203 (28191) and Lot 22204 (28192) are referred to jointly as the E "said lots"). In short SP1 explained that the titles to the said lots have been falsified;

(c) On 8 January 2004, Low Wee Houng (SP8), a director of Rahim Enterprise Sdn Bhd, who is the owner of Lot 22203, lodged a police report (exh. P1) complaining that the said Lot F had been unlawfully transferred to Boh Chin Chye. SP8 testified that the original title deed of the said lot was kept by him at all material times and he does not know Boh Chin Chye or ever entered into any transaction or dealing in respect of the said Lot 22203;

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(d) On the same date 8 January 2004, SP2 had lodged a similar police report (exh. P2) complaining that Lot 22204 had been transferred unlawfully to Boh Chin Chye. Neither SP2 nor his partners know Boh Chin Chye. SP2 testified that they had at H no time entered into any transaction or dealing in respect of the said Lot 22204;

(e) ASP Norazlin bt Che Mohd Noor (SP3) and Chief Inspector N Samneswaran (SP7) informed that they were the I investigating officers of exh. P1 and P2 and their investigations revealed the fraudulent transfer of the said lots using the identity of Boh Chin Chye and subsequently the said lots were sold to another person;

(f) SP3 and SP7 confirmed that pursuant to their investigations the first accused was charged in the Shah Alam Sessions Court (MSSA: 62-41-2005) for an offence of forgery of valuable securities relating to the said lots No. 28191 and lot No. 28192 (exh. P3 and P5), an offence under s. 467 of the Penal Code. Also charged, according to SP3, SP7 and SP23, was Mohd Afdzal Rizal bin Rashid, an employee of a private company attached to the PTG, for an offence of unauthorized access of a PTG computer with intent to commit a further offence, an offence under s. 4(1) of the Computer Crimes Act 1997. Another person by the name of Kannisamy was also charged for an offence of cheating under s. 420 of the Penal Code in relation to the said lots. I must add at this juncture that the evidence produced before me also clearly disclosed an offence of using as genuine the forged land documents for lot title No. 28191 and 28192, an offence under s. 471 of the Penal Code;

(g) SP6 Syed Ahmad Fauzi, testified he was a part time property broker working together with the second accused. His explanation confirmed that Jimmy Chan Kian Mun (SP17) introduced the said lots to SP6 and the second accused. The initial meeting was between SP6, SP17 and the second accused. According to SP6, SP17 offered the said lands for RM2.5 million. The second accused then requested for a meeting with the land owner. The meeting was held the next day with the first accused representing Boh Chin Chye, the owner of the said lots. Both SP6 and the second accused agreed to buy the said lots and SP6 paid RM 10,000.00 as his part of the deposit;

(h) According to SP6 the said lots were thereafter sold for RM9 million and the purchase price was paid into Syed Ibrahim & Co's account. SP6 opened a current account at Standard Chartered Bank at Jalan Ampang to enable the purchase price to be deposited into the said account. SP6 confirmed receiving the three payments from Syed Ibrahim & Co. (Exhibits P17, P18 and P19) totaling RM8.4 million in his current account;

(i) Syed Ibrahim bin Syed Abd Rahman (SP5) testified that the first and second accused approached him in respect of the said lots. According to him Boh Chin Chye had appointed his law firm Syed Ibrahim & Co to deal with the sale and purchase of the said lots at the price of RM2.5 million (exh. P13);

(j) Liang Chong Beng (SP4) testified that the sale and purchase agreement (exh. P9) between B & G Intertrade and Boh Chin Chye was prepared by his law firm Messr Nga Hock Cheah & Co SP4 confirmed that the computerized searches conducted at the PTG on 10 November 2003 showed Boh Chin Chye as the registered owner of the said lots;

(k) SP4 also confirmed that after the 10% (exh. 10 and P11) of the purchase price was paid a caveat was registered against the said lots. The balance of RM8.1 million (exh. P12) was forwarded to the vendor's solicitor Syed Ibrahim & Co on 26 December 2003 in exchange of Form 14A;

(l) SP5 confirmed receiving the RM9 million (exhs. P10, 11 and 12) into his firm's client account and subsequently he paid out RM8.4 million (exhs. P17, 18 and 19) to SP6's current account in accordance with the second accused's instructions. The balance of RM510,000 was retained by SP5 as his legal fees;

(m) Goh Meng Keong (SP12) and Goh Ming Choon (SP16), the directors of B & G Intertrade, confirmed that in 2003 they did purchase the said lots for their company at a price of RM9 million. SP12 also confirmed the caveats entered on the said lots on 10 October 2003 and 14 October 2003;

(n) SP4 confirmed that the said lots have not been transferred to B & G Intertrade because of the fraud involved in this case;

(o) Boh Chin Chye's statement recorded by SP23 was admitted and marked as exh. P71 after the prosecution proved to the court that despite numerous attempts to trace Boh Chin Chye, he cannot be found. According to Boh Chin Chye in exh. P71, the first accused had informed Boh Chin Chye that the Selangor State Government was in the process of giving out land and promised to obtain a piece of land for Boh Chin Chye. Boh Chin Chye gave his identity card to the first accused. P71 also revealed that Boh Chin Chye only received RM50 from the first accused;

(p) Sahalan bin Subaat (SP15), Head of Customer Service at Bumiputra Commerce Bank at Telok Panglima Garang testified that on 23 March 2004 he had lodged a police report (exh. P47) stating that the first accused had come to his bank

and using Boh Chin Chye's identity card wanted to open a bank account under the name of Saga Inspirasi. Realising the difference in the photograph in Boh Chin Chye's identity card and the first accused, SP15 asked the first accused whether the identity card was his and the first accused replied that the identity card was his. According to SP15, after a few months Boh Chin Chye himself came and reported in writing (exh. P48) that someone had used his identity card to open an account in the said bank without his knowledge or consent;

(q) Nagalingam a/l Thandavan (SP25), a registered property valuer valued the said lots at the material time as follows:

	Lot 22203	Lot 22204
Industrial land 'As is' value Forced Sale Value (Industrial)	RM11,426,000.00 RM 6,537,000.00 RM 9,513,000.00	RM 11,416,000.00 RM 6,531,000.00 RM 9,144,000.00
Forced Sale Value (Agriculture)	RM 5,229,000.00	RM 5,225,000.00

(r) SP6 testified that in accordance with the first and second accused's instructions, he had paid out a total sum of RM2,434,000 from his SCB current account to the first accused which is as follows:

Date	Amount	From	To	Exhibit	Charges
9.1.2004	RM2,000,000	SP6	First Accused	P25	1
18.11.2003	RM184,000	SP6	First Accused	P22	2
5.12.2003	RM10,000	SP6	First Accused	P23	3
2.1.2004	RM240,000	SP6	First Accused	P24	4

(s) SP6 also confirmed that he paid out on the second accused's instructions from his SCB's current account as follows:

Date	Amount	From	To	Exhibit	Charges
20.11.2003	RM50,000	SP6	Second Accused	P28	1
18.11.2003	RM20,000	SP6	Second Accused	P29	2
19.11.2003	RM20,000	SP6	Second Accused	P30	3
19.11.2003	RM150,000	SP6	Norkhanyi Ahmad	P32	4
6.1.2004	RM15,000	SP6	Yaacob Deraman	P34	5
6.1.2004	RM15,000	SP6	ACMA Corporation	P35	6
5.1.2004	RM20,000	SP6	Second Accused	P31	7
5.1.2004	RM100,000	SP6	Second Accused	P27	8
9.1.2004	RM1,330,000	SP6	Rekollan Enterprise	P33	9
9.1.2004	RM1,000,000	SP6	Norkhanyi Ahmad	P37	10
9.1.2004	RM120,000	SP6	Chan Kian Mun	P26	11
13.1.2004	RM11,500	SP6	Mazlinda, Azlina & Co	P36	12

(t) SP6 also confirmed that out of the remaining sum of RM1.7 million, RM1.2 million were saved in SP6's fixed deposits (exhs P38 (a)-(l) and the RM500,000 was utilized to pay for SP6's motorcars, outstanding loans and personal matters. The RM 1.2 million fixed deposit has since been seized and frozen by the authorities; and

(u) SP6 also testified that out of the RM8.4 million that he had received he did not receive any instructions from the first and second accused to pay Boh Chin Chye. In other words no payment was made to Boh Chin Chye by SP6. SP6 also confirmed that the second accused's deceased son, Iswa Norazwa, SP21, Rekkolan Enterprise, Md Yakob Darman, ACMA Corporation and Mazlinda, Azlina & Co have nothing to do with the sale and purchase of the said lots.

Prima Facie Case

[5] I had explained the test for a *prima facie* case in my earlier reported decision of *PP v. V Alexander Chaco Varghese (And Another Case)* [2010] 9 AMR 159. I am using the same *prima facie* test in this case which is that in order for the court to be satisfied that a *prima facie* case has been made out, the court must undertake a maximum evaluation of the prosecution evidence. According to Gopal Sri Ram JCA (as he then was) in the case of *PP v. Mohd Radzi Abu Bakar* [2006] 1 CLJ 457:

> This requires the court to undertake a maximum evaluation of the prosecution evidence when deciding whether to call on the accused to enter upon his or her defence. It involves an assessment of the credibility of the witnesses called by the prosecution and the drawing of inferences admitted by the prosecution evidence. Thus, if the prosecution evidence admits two or more inferences, one of which is in the accused's favour, then it is the duty of the court to draw the inference that is favourable to the accused.
>
> ... If the court, upon a maximum evaluation of the evidence placed before it at the close of the prosecution case, comes to the conclusion that a *prima facie* case has been made out, it must call for the defence. If the accused then elects to remain silent, the court must proceed to convict him. It is not open to the court to then re-assess the evidence and to determine whether the prosecution had established its case beyond a reasonable doubt. The absence of any evidence from the accused that casts a reasonable doubt on the prosecution's case renders the *prima facie* case one that is established beyond a reasonable doubt.

[6] The test at the close of the prosecution case is therefore:

> If the accused elects to remain silent, as he is perfectly entitled to do, am I prepared to convict him on the evidence now before me? ... If the answer to that question is in the affirmative, then the defence must be called. And if the accused remains silent, he must be convicted. If the answer is in the negative, then the accused must be acquitted.

A

Elements Of The Offence

[7] Both the accused are charged for offences under s. 4(1) of the Anti-Money Laundering Act 2001 (Act 613) (AMLA) now known as Anti-Money Laundering and Anti-Terrorism Financing Act 2001 (Act 613) (AMLATFA). The relevant provisions read as follows:

B

> 4.(1) Any person who:
>
> (a) engages in, or attempts to engage in; or
>
> C
>
> (b) abets the commission of,
>
> money laundering, commits an offence and shall on conviction be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding five years or to both.

D

[8] The interpretation of "money laundering" under s. 3(1) of the AMLA is as follows:

> "money laundering" means the act of a person who:
>
> E
>
> (a) engages, directly or indirectly, in a transaction that involves proceeds of any unlawful activity;
>
> (b) acquires, receives, possesses, disguises, transfers, converts, exchanges, carries, disposes, uses, removes from or brings into Malaysia proceeds of any unlawful activity; or
>
> F
>
> (c) conceals, disguises or impedes the establishment of the true nature, origin, location, movement, disposition, title of, rights with respect to, or ownership of, proceeds of any unlawful activity;
>
> G where:
>
> (aa) as may be inferred from objective circumstance, the person knows or has reason to believe, that the property is proceeds from any unlawful activity; or
>
> H
>
> (bb) in respect of the conduct of a natural person, the person without reasonable excuse fails to take reasonable steps to ascertain whether or not the property is proceeds from any unlawful activity;

I

[9] For an offence under s. 4(1) of the AMLA the prosecution must therefore prove the following elements against the accused:

(a) the accused has received or used (according to the charge) the monies (first element);

(b) the monies received or used are the proceeds of an unlawful activity (second element);

(c) from the objective factual circumstance it may be inferred that the accused knows or has reason to believe, that the monies are the proceeds from any unlawful activity; or

the accused without reasonable excuse failed to take reasonable steps to ascertain whether or not the monies are the proceeds from any unlawful activity (third element).

First Element

[10] I am satisfied that there is sufficient credible evidence to establish the first element, that is, the offending act of receiving or using the monies in all the charges against both the accused. The movement of monies was explained by SP6 and supported by the various witnesses and banking documents. In fact this element was not disputed by both the accused.

First Accused

[11] According to Neelambihai a/p Thambyrajah (SP18) based on the Standard Chartered Bank's records RM184,000, RM10,000, RM240,000 and RM2 million (exhs. P22, P23, P24 and P25) were presented and cashed by Gan Kiat Bend who is the first accused. In other words the first accused has received the RM 184,000.00, RM10,000, RM240,000 and RM2 million which are the subject matter of the first, second, third and fourth charges against the accused.

Second Accused

[12] As against the second accused (SD2), the evidence very clearly shows that the second accused had received or used the monies which are the subject matter of the twelve charges and which are as follows:

Charges	Date	Amount	From	To	To	Act	Exhibit
1.	20.11.2003	RM50,000	SP6	SD2	Izwar Norazwar	Received	P28
2.	18.11.2003	RM20,000	SP6	SD2	SP17	Used	P29
3.	19.11.2003	RM20,000	SP6	SD2	SP22	Used	P30
4.	19.11.2003	RM150,000	SP6	SD2	SP21	Used	P32
5.	6.1.2004	RM15,000	SP6	SD2	SP20	Used	P34
6.	6.1.2004	RM15,000	SP6	SD2	ACMA Corporation	Used	P35
7.	5.1.2004	RM20,000	SP6	SD2	SP22	Used	P31
8.	5.1.2004	RM100,000	SP6	SD2	SD2	Used	P27
9.	9.1.2004	RM1,330,000	SP6	SD2	Rekollan Enterprise	Used	P33
10.	9.1.2004	RM1,000,000	SP6	SD2	SP21	Used	P37
11.	9.1.2004	RM120,000	SP6	SD2	SP17	Used	P26
12.	13.1.2004	RM11,500	SP6	SD2	Mazlinda, Azlina & Co	Used	P36

[13] I find SP6 a credible witness and have no reasons to doubt that he had disbursed the monies from his Standard Chartered account according to the second accused's instructions and request. In this respect I warned myself of the danger of convicting both the accused based on SP6's evidence on the grounds that he is an accomplice but I could find no reason to disbelieve his evidence. I find SP6 a truthful witness. The following evidence confirms the movement of monies as explained by SP6:

(a) SP17 confirmed receiving RM120,000 (exh. P26) and RM20,000 (exh. P29) for his introducer fee for the sale of the said lands. SP17 positively identified that exh. P26 was given to him by the second accused. SP17 testified that he had at no time personally met Boh Chin Chye and that it was the first accused who asked him to sell the said lots;

(b) Zulkeply bin Yaakop (SP22) confirmed receiving RM20,000 (exh. P30) and RM20,000 (exh. P31) from the second accused for SP22's introducer commission for the pieces of other land and loan amount owed by the second accused;

(c) Norkhanyi binti Ahmad (SP21), the wife of the second accused confirmed that the amount of RM150,000 (exh. P32) was deposited directly into her account and was informed of it by the second accused and who told her to withdraw the said sum. SP21 accordingly withdrew the said RM150,000 and kept it at home until the second accused came and collected it from her. SP21 does not know why the RM150,000 (exh. P32) was deposited into her account and not into the second accused account directly;

(d) SP21 also confirmed receiving RM1 million (exh. P37) directly into her CIMB account. The second accused phoned her from Kuala Lumpur and informed her that RM1 million had been deposited into SP21's account. After one or two weeks later the second accused instructed her to return the said RM1 million. SP21 accordingly withdrew the RM1 million and returned it to the second accused;

(e) Md Ya'kob bin Darman (SP20) confirmed that he received RM15,000 (exh. P34) from the second accused personally. According to SP20 the second accused owed him RM15,000;

(f) Ah Kian @ Wong Ah Kian (SP19), the owner of ACMA Corporation at the material time confirmed receiving RM15,000 (exh. P35) from SP6. According to SP19, the second accused owed him RM85,000 and that the second accused paid him the RM15,000 as part payment of the outstanding amount owed;

(g) Azlina binti Abdullah (SP9) of Mazlinda Azlina & Co. of Kangar, Perlis confirmed receiving RM11,500 (exh. P36) from the second accused for the sales transaction of a piece of land in Perlis under the second accused wife's name (SP21);

(h) Lee Kok Choon (SP10) Branch Manager of EON Kajang Branch confirmed that RM1,330,000 (exh. P33), a local cheque was credited into Rekollan Enterprise's account and was processed on 9 January 2004. The account holder is Iswa Norazwa bin Ismail;

(i) ASP Balwant Singh s/p Shaginder Singh (SP23) testified that he had recorded a statement of Iswar Norazwa who has since passed away. The statement is exhibited as (exh. P58).

According to exh. P58, Iswar Norazwa confirmed receiving the cheque amounting to RM1,330,000 (exh. P33) from his father, the second accused. In accordance to the second accused's instructions, exh. P33 was deposited into his company, Rekollan Enterprise's account (exh. 59B) and which monies were subsequently withdrawned and returned back to the second accused;

(j) The deceased, Iswar Norazwar, also confirmed in exh. P58 that he had received a second cheque in the amount of RM150,000 (exh. P28) on 20 November 2005. He had thereafter cashed the said cheque at Standard Chartered Bank at Jalan Ampang and the monies were subsequently returned to the second accused; and

(k) Tan Chin Hsin (SP11), a Standard Chartered Operation and Service Manager confirmed all the transactions of deposits and withdrawal from exhs. P17 to P19 and P22 to P37 in relation to SP6's current account.

Second Element

[14] The second element in all the sixteen charges revolves around the issue of proceeds of an unlawful activity. I am satisfied that the evidence produced before me proved that the monies received or used by both the accused in respect of all the sixteen charges against both the accused are the proceeds of an unlawful activity.

"Proceeds of an unlawful activity" is explained in section 3(1) of the AMLA:

"means any property derived or obtained, directly or indirectly, by any person as a result of any unlawful activity;"

"Unlawful activity" means:

"any activity which is related, directly or indirectly, to any serious offence or any foreign serious offence;"

"Serious offence" means:

(a) any of the offences specified in the Second Schedule;

(b) an attempt to commit any of those offences; or

(c) the abetment of any of those offences;

[15] In this regards, the prosecution must prove:

(a) the commission of a serious offence or commonly referred to as the predicate offence; and

(b) the monies specified in the sixteen charges are the proceeds of the serious offence.

Serious Offence

[16] The prosecution's case discloses the following serious offences:

(a) forgery, an offence under s. 465 of the Penal Code or forgery of a valuable security, an offence under s. 467 of the Penal Code;

(b) using as genuine a forged document, an offence under s. 471 of the Penal Code; and

(c) cheating, an offence under s. 420 of the Penal Code.

[17] The offences under ss. 465, 467, 471 and 420 of the Penal Code are listed in the Second Schedule to the AMLA and therefore fall within the definition of a serious offence.

[18] In dealing with the ingredient of serious offence I am fully mindful of s. 4(2) of the AMLA which reads:

> (2) A person may be convicted of an offence under subsection (1) irrespective of whether there is a conviction in respect of a serious offence or foreign serious offence or that a prosecution has been initiated for the commission of a serious offence or foreign serious offence.

[19] The effect of s. 4(2) of the AMLA is very wide and far reaching. Section 4(2) clearly provides that both the accused or for that matter any person need not to be charged for the commission of a serious offence. Even if the accused or any person is charged for such an offence it need not be that the accused or the person charged must be convicted of the serious offence for purposes of the s. 4(1) of the AMLA offence. What is required for purposes of s. 4(1) of the AMLA is that the unlawful act in the serious offence such as an act of forgery, forgery of a valuable security, using as genuine a forged document or cheating is

committed is sufficient. In other words there is no requirement to prove who committed the serious offence or that the person who committed it must be charged or convicted of that offence. However drastic s. 4(2) of the AMLA may sound this is the intention of the legislature. The intended purpose of the anti money laundering laws is to recover proceeds obtained from any unlawful activity.

[20] The standard of proof required to proof a serious offence at the close of the prosecution's case for the purposes of s. 4(1) of the AMLA is the *prime facie* proof. Since "unlawful activity" is one of the ingredients which the prosecution must prove at the close of the prosecution's case, it must necessarily follow that it must be proven on a *prima facie* standard and in accordance to the case of *PP v. Mohd Radzi Abu Bakar* [2006] 1 CLJ 457.

[21] The prosecution's evidence in relation to the ingredient of serious offence is as follows:

(a) SP1's evidence shows:

(i) the registered owner of Lot 28191 (22203) in the original manual title is Rahim Enterprise Sdn Bhd. (exh. P4);

(ii) the computerized record of Lot 22203 shows Boh Chin Chye as the registered owner (exh. P3);

(iii) the change of ownership from Rahim Enterprise Sdn Bhd to Boh Chin Chye is not supported by any transfer document such as the Memorandum of Transfer in Form 14A;

(iv) the registered owners of Lot 28192 (22204) in the original manual title are SP2, Tan Lian Hua and Improvest Sdn Bhd. (exh. P6);

(v) the computerized record of Lot 22204 shows Boh Chin Chye as the registered owner (exh. P5); and

(vi) the change of ownership from SP2, Tan Lian Hua and Improvest Sdn. Bhd. is not supported by any transfer document such as the Memorandum of Transfer in Form 14A;

(b) SP8's evidence shows:

(i) he is the director of Rahim Enterprise Sdn Bhd who is the owner of Lot 22203;

(ii) the original manual title deed of Lot 22203 were kept by him at all material times;

(iii) at no point of time he entered into any transaction or dealing in respect of Lot 22203 (28191);

(iv) he does not know Boh Chin Chye; and

(v) he lodged a police report (exh. P1) reporting that Lot 22203 (28191) had been fraudulently transferred to Boh Chin Chye.

(c) SP2's evidence shows:

(i) neither SP2 nor his partners had entered into any transaction or dealing in respect of Lot 22204 (28192);

(ii) neither SP2 nor his partners know of Boh Chin Chye; and

(iii) SP2 lodged a police report (exh. P2) reporting that Lot 22204 (28192) had been fraudulently transferred to Boh Chin Chye.

(d) SP3 and SP7 evidence shows:

(i) they were the investigating officers in respect of the police reports exhs. P1 and P2;

(ii) their investigation revealed the fraudulent transfer of Lot 22203 (28191) and Lot 22204 (28192) using the identity of Boh Chin Chye;

(iii) the first accused was in fact charged in respect of an offence of forgery under s. 467 of the Penal Code in respect of the forged land title documents No. 28191 (Lot 22203) and 28192 (Lot 22204) (exh. P3 and P5) in the Shah Alam Sessions Court (MSSA: 62-41-2005);

(iv) one Mohd Afdzal Rizal bin Rashid, an employee of a private company who was attached to the computerization section of PTG was also charged for an offence of

A unauthorized access of the PTG computer with intent to commit a further offence, an offence under s. 4(1) of the Computer Crimes Act 1997; and

(v) another person by the name of Kannisamy was also charged for an offence of cheating under s. 420 of the Penal Code in relation to both the said lots;

(e) The evidence of Boh Chin Chye as in exh. P71 shows:

(i) the first accused had informed Boh Chin Chye that he promised to obtain a piece of land for Boh Chin Chye; and

(ii) Boh Chin Chye gave his identity card to the first accused.

(f) SP15's evidence shows:

(i) the first accused had come to Bumiputra Commence Bank at Telok Panglima Garang and used Boh Chin Chye's identity card to open a bank account under the name of Saga Inspirasi;

(ii) SP15 realising the difference in the photograph in Boh Chin Chye's identity card and the first accused asked the first accused whether the identity card belonged to the first accused which the first accused said is his;

(iii) a few months later Boh Chin Chye came to report in writing (exh. P48) that someone had used his identity card to open an account in Bumiputra Commerce Bank; and

(iv) SP15 lodged a police report of this incident (exh. P47).

(g) SP5's evidence shows:

(i) first and second accused approached him and appointed his firm, Syed Ibrahim & Co, to deal with the sale and purchase of the said lots;

(ii) SP5 was given the copies of the said lots titles which showed Boh Chin Chye as the registered owner;

(h) SP6's evidence shows:

(i) there was a meeting between the first accused, SP6 and SP17 and the second accused where the first accused represented Boh Chin Chye; and

(ii) both SP6 and the second accused agreed to buy the said lots for a price of RM2 million and RM10,000 was paid as part of the deposit.

(i) SP4's evidence shows:

(i) the sales and purchase agreement between Boh Chin Chye and B & G Intertrade was prepared by his law firm;

(ii) the computerized searches at PTG showed Boh Chin Chye as the registered owner of the said lots;

(iii) the 10% of purchase price was paid and caveats lodged and subsequently the balance of RM8.1 million was forwarded to Syed Ibrahim & Co; and

(iv) the said lots have not been transferred to B & G Intertrade up to this date because of the fraud involved in this case.

[22] Perusing the evidence of SP1, SP2, SP3, SP4, SP5, SP6, SP7, SP8, SP15 and exh. P71 there is overwhelming evidence of an offence of forgery under s. 465 or offence of forgery of a valuable security under s. 467 of the Penal Code of the computerised land titles of Lot 28191 and 28192 which culminated from the manual lot titles number 22203 and 22204 and now fraudulently registered in the name of Boh Chin Chye.

[23] The computerized land titles of Lot 28191 and 28192 are false or forged compared to the original land titles of 22203 and 22204 and falls within the definition of false document referred to in s. 464(a) of the Penal Code. The falsification has obviously caused loss to the rightful owners of the said lots 28191 (22203) and 28192 (22204). In short there was fraud committed on Rahim Enterprise Sdn Bhd which can be seen by way of SP8's evidence in respect of Lot 22203 and there was fraud committed on SP2, Tan Lian Hua and Improvest Sdn Bhd in respect of Lot 22204 which can be seen from SP2's testimony. The prosecution has also proved by way of exh. P71 that Boh Chin Chye is not the rightful owner of the said lots as reflected in the falsified titles of the said lots 28191 and 28192. There is no doubt whatsoever that both the title deeds of lot 28191 and 28192 are valuable security. To my mind the forgery of the said lots 28191 and 28192 would clearly fall squarely within the offence of forgery under s. 465 of the Penal Code. The offence of forgery under

s. 465 of the Penal Code is listed in the Second Schedule to AMLA as a serious offence. It is also my finding that all the ingredients of forgery of valuable security in the form of the said lots 28191 and 28192 are established and that there is a *prima facie* case of the commission of the offence of forgery of a valuable security, an offence under s. 467 of the Penal Code which is also listed in the Second Schedule to AMLA as a serious offence.

[24] It is also my finding that there is overwhelming evidence that both the accused had dishonestly used the false or forged lots 28191 (22203) and 28192 (22204) as genuine to make wrongful gain for themselves and had caused wrongful loss to B & G Intertrade and they had thereby committed an offence that clearly falls within s. 471 of the Penal Code. There is no doubt that the said title to lots 28191 (22203) and 28192 (22204) are forged documents, in other words they fall within the term false documents under s. 470 of the Penal Code. 'Dishonestly' is explained in s. 24 of the Penal Code that is 'whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing dishonestly'. Wrongful gain and wrongful loss are in turn explained in s. 23 of the Penal Code. In this case it is obvious that wrongful loss has been caused to B & G Intertrade and there was wrongful gain on the part of both the accused. In short there is *prima facie* evidence before me to show that both the accused had dishonestly used as genuine the forged said title lots 28191 (22203) and 28192 (22204) when they had reason to believe that the said title lots were forged. The reason to believe element is discussed further under the third element. An offence under s. 471 is therefore clearly proven by the prosecution in this case. The offence under s. 471 of the Penal Code is listed in the Second Schedule to the AMLA as a serious offence.

[25] I am satisfied that the prosecution has proven the ingredients of the serious offences, that is offences under ss. 465, 467, 471 and 420 of the Penal Code on a *prima facie* basis.

[26] Similarly I am satisfied that an offence of cheating under s. 420 of the Penal Code is also made out. There is evidence to show that SP12 and SP16 who are the directors of B & G Intertrade would not have parted with the RM9 million if they had not been induced with the said false titles.

[27] Since the prosecution has proven the commission of the serious offence on a *prima facie* basis then it flows that the monies derived from the sale of the said lots namely RM9 million are proceeds of an unlawful activity.

[28] There is one other issue which I had addressed in deciding that the prosecution had proven the serious offence on a *prima facie* basis that is the issue of retrospectivity of s. 4(1) of the AMLA. The sequence of events shows that the money laundering offences were committed between November 2003 and January 2004. The evidence adduced during the prosecution's case regarding the unlawful activities from where the proceeds were derived from relates to offences under ss. 465, 467, 471 and 420 of the Penal Code. Serious offence is defined in s. 3 of the AMLA All these serious offences are listed in the second schedule. It is however pertinent to note that except for s. 467 of the Penal Code all the other serious offences in this case were in the Second Schedule at the time AMLA 2001 came into force on 15 January 2001. However s. 467 was inserted as a serious offence on 30 September 2004 (See: PU(A) 339/04). In the matrix of things, s. 467 was not a serious offence listed in the Second Schedule when the AMLA offences were committed by the accused persons. This brings into question the validity of the AMLA charges against the accused persons. Although this point was not canvass before me, I took it upon myself to examine the validity of these charges in the light of art. 7 of the Federal Constitution. Article 7 states:

> Protection against retrospective criminal laws and repeated trials.
>
> 7(1) No person shall be punished for an act or omission which was not punishable by law when it was done or made, and no person shall suffer greater punishment for an offence than was prescribed by law at the time it was committed.

Having considered the relevant authorities I am of the view that the AMLA charges do not offend art. 7 for the following reasons:

(a) Section 2 of the AMLA specifically allows the application of "serious offence, unlawful activity or foreign serious offence whether committed before or after" the commencement of AMLA 2001. Section 2(1) reads:

> (1) This Act shall apply to any serious offence, foreign serious offence or unlawful activity whether committed before or after the commencement date.

A The commencement date of AMLA is 15 January 2002. In this case the unlawful activities were committed after 15 January 2002. By virtue of its definition the unlawful activities can relate to "any" serious offence, whether "directly or indirectly". The function of the Second Schedule in this B case is just to put a label to the unlawful activity. It does not matter when the unlawful activity was committed. By virtue of s. 4(2) of the AMLA it is not even necessary for there to be a prosecution or a conviction of the serious offence;

C (b) The accused persons were not charged with the offence under s. 467 of the Penal Code before me. They certainly cannot be punished for the offence under s. 467 of the Penal Code;

(c) It would be contrary to Parliament's intention to exclude from D the jurisdiction of the courts those money laundering activities which occurred before the serious offences related thereto were listed in the Second Schedule. It is absurd to say that Parliament proceeded to legislate for the creation of the offence of money laundering only for it to be applicable some E time after the serious offence had been listed in the Second Schedule when it is well aware that the act of money laundering could occur years after the serious or predicate offence. Meanwhile those money launderers who had benefited from the proceeds of serious offences listed after the F laundering would go free. Surely that must have been the very mischief which Parliament intended to address when it legislated AMLA. It is trite law that a statute must be read as a whole (See: *Kesultanan Pahang v. Sathask Realty Sdn Bhd* [1998] 2 CLJ 559). With this in mind I note that nowhere in G the AMLA does it state that the prosecution be instituted after the serious offence had been listed. To the contrary Parliament had legislated that it is irrelevant that the serious offence or the unlawful activity occurred before or after the coming into force of the AMLA. In any event it is very clearly H provided that there need not be a prosecution or conviction of the serious offence; and

(d) The purpose of AMLA is clearly stated in its preamble which reads:

I > An Act to provide for the offence of money laundering, the measures to be taken for the prevention of money laundering and terrorism financing offences and to provide for the

> forfeiture of terrorist property and property involved in, or derived from, money laundering and terrorism financing offences, and formatters incidental thereto and connected therewith.

It is my considered view that to contend that s. 467 did not apply to AMLA on the basis that it was not listed as a serious offence at the time the money laundering occurred would run counter to the purpose of AMLA as stated in its preamble. In this respect I can do no better than to echo Lord Denning in *Nothman v. Barnet London Borough Council* [1978] 1 WLR 220, when he reiterated that in all cases involving the interpretation of statutes, we should adopt a construction that would promote the general legislative purpose. This approach had been judiciously approved by the Federal Court in the cases of *Hoh Kiang Ngan v. Mahkamah Perusahaan Malaysia & Anor* [1996] 4 CLJ 687. Section 17A of the Interpretation Act 1967 mirrors this approach in the following words:

> Regard to be had to the purpose of Act.
>
> 17A. In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

For these reasons I find that s. 467 of the Penal Code is also applicable as a serious offence in relation to a charge under s. 4(1) of the AMLA. In the premise I also find that the charges do not offend art. 7(1) of the Federal Constitution.

Third Element

[29] The prosecution is also required to prove on a *prima facie* basis that on the objective factual circumstance the accused had knowledge or had reason to belief that the monies are the proceeds of an unlawful activity or that the accused had failed to ascertain whether the monies are the proceeds from an unlawful activity.

Objective Factual Circumstances

[30] The relevant factual circumstances in this case are as follows:

A (a) the titles to the said lots have been forged at the land office;

(b) subsequent and repeated searches of the land titles of the said lots would no doubt reveal the particulars or information which have been forged;

B (c) First accused offered to sell the said lots for RM3 million;

(d) First accused eventually sold the said lots for RM2.5 million;

(e) SP25 who is a registered project valuer valued the said lots at
C the material time as follows:

	Lot 22203	Lot 22204
Industrial land	RM 11,426,000	RM 11,416,000
'As is' value	RM 6,537,000	RM 6,531,000
D Forced Sale Value (Industrial)	RM 9.513,000	RM 9,144,000
Forced Sale Value (Agriculture)	RM 5,229,000	RM 5,225,000

E

(f) The defence own witness, SD3 confirmed that in a situation where the commission earned exceeds the price of the land the vendor must be a sick person (penjual itu adalah tidak sihat);

F

(g) The suspicious activities by the second accused to disguise the unlawful proceeds are as follows:

Charges	Date	Amount	From	To	To	Exhibit
G 1.	20.11.2003	RM50,000	SP6	Second Accused	Second Accused	P28
2.	18.11.2003	RM20,000	SP6	Second Accused	Second Accused	P29
H 3.	19.11.2003	RM20,000	SP6	Second Accused	Second Accused	P30
4.	19.11.2003	RM150,000	SP6	Second Accused	Norkhanyi Ahmad	P32
I 5.	6.1.2004	RM15,000	SP6	Second Accused	Yaacob Deraman	P34

Charges	Date	Amount	From	To	To	Exhibit
6.	6.1.2004	RM15,000	SP6	Second Accused	ACMA Corporation	P35
7.	5.1.2004	RM20,000	SP6	Second Accused	Second Accused	P31
8.	5.1.2004	RM100,000	SP6	Second Accused	Second Accused	P27
9.	9.1.2004	RM1,330,000	SP6	Second Accused	Rekollan Enterprise	P33
10.	9.1.2004	RM1,000,000	SP6	Second Accused	Norkhanyi Ahmad	P37
11.	9.1.2004	RM120,000	SP6	Second Accused	Chan Kian Mun	P26
12.	13.1.2004	RM11,500	SP6	Second Accused	Mazlinda, Azlina & Co	P36

First Accused

[31] The prosecution relies on the following circumstances to show that the first accused had knowledge or had reason to believe that monies he received as per the charges are the proceeds of the unlawful activity:

(a) the first accused investment was a mere RM30,000;

(b) on the other hand the first accused has received a total sum of RM2,434,000 which is a huge sum of money;

(c) the accused made a whooping profit of about RM2.5 million within days; and

(d) the identity card of Boh Chin Chye containing the first accused photograph which was used in this land deal very obviously shows the participation or nexus of the first accused in the predicate offence.

Based on the objective factual circumstances of the case it is very obvious that the first accused know or has reasons to believe that the land titles and the RM2.5 million proceeds are arising out of an unlawful activity.

Second Accused

[32] Based on the objective factual circumstances second accused has reason to believe that the monies he received or used is the proceeds of an unlawful activity. Why would the second accused get SP5:

(a) to issue a cheque of RM150,000 to his wife Norkhanyi (SP21) and then get the money back from her;

(b) to make a telegraphic transfer of RM1 million to his wife Norkhanyi (SP21) and then get the RM1 million back from her;

(c) to issue a cheque of RM1,330,000 to his son's company, Rekollan Enterprise, and then get the RM1,330,000 back from his son; and

(d) to issue a cheque of RM50,000 to his son and then get the RM50,000 back from his son.

[33] These factual circumstances viewed objectively would point to the fact that the second accused is disguising the dirty money and cleaning it by putting it into other accounts before getting it back. The second accused's actions falls within what is termed in money laundering as 'placement, layering and integration'. These are the three stages of money laundering. It shows the dishonest intentions of the second accused.

[34] The repeated searches at the PTG to my mind was just a cover up to show that the second accused was doing the right thing when all along he very well have reasons to believe that the land titles were a result of the unlawful activities.

[35] Accordingly based on the factual circumstances of the case objectively I am satisfied that the second accused knows or has reasons to believe that the sums stated in the charges are the proceeds of an unlawful activity.

The Defence

[36] Both the accused gave sworn evidence and called one other witness, Anjaniman bin Abu Kassim (SD3). Before considering the defence of both the accused it is necessary to state the duty of

the court at the end of the defence case. At the end of the case for the defence in accordance with s. 173(m) of the Criminal Procedure Code, the duty of the court is to consider all the evidence adduced before it and decide whether the prosecution has proved its case beyond reasonable doubt. In *Jaafar Ali v. PP* [1999] 1 CLJ 410 it was stated as follows:

> In considering all the evidence adduced, it is important to bear in mind that the onus of proof of guilt always rests with the prosecution and never shifts to the accused (*Wong Sieng Ping v. PP* [1967] 1 MLJ 56). All the accused had to do is to raise a reasonable doubt on the case for the prosecution. He need not prove his innocence nor convince me of the truth of his story. All that he has to do is to show that his defence might reasonably be true or probable so as to raise a reasonable doubt on the prosecution's case (See: *Mohamad Radhi Yaakob v. PP* [1991] 3 MLJ 169).

First Accused

[37] The first accused in examination in chief testified very briefly as follows:

(a) he has been a land broker between 3 to 4 years since 2003 and has handled 2 or 3 land sales and purchase transactions.

(b) In this case he had obtained the two title deeds from a friend called Richard;

(c) he had paid RM30,000 to Richard to procure the said lots;

(d) he had asked Richard to get the said lots registered under Boh Chin Chye's name because the first accused's name has been blacklisted;

(e) though the said lots were registered in Boh Chin Chye's name the said lots actually belonged to the first accused as Boh Chin Chye had merely allowed his name to be used for the said lots;

(f) he offered to sell the said lots for RM3 million but eventually agreed at a price of RM2.5 million and considered RM2.5 million a reasonable price;

(g) that Syed Ibrahim & Co paid Boh Chin Chye a sum of RM15,000 as a deposit; and

(h) paid RM100,000 to Boh Chin Chye for allowing the use of Boh Chin Chye's name.

[38] Under cross examination the first accused evidence was as follows:

(a) he knew Richard for about a year but do not know his basic particulars such as his occupation. He does not even know Richard well except that he met Richard at Genting Highlands where Richard had lent him money in the range RM50,000 to RM80,000;

(b) he did not even ask Richard how he could obtain the land from the Government;

(c) he claimed that his name was blacklisted but when pressed where's the documents to prove his name is blacklisted he said that he does not know how to read the letter but he knows the letter states he is blacklisted. The first accused failed to produce an *iota* of evidence to show that his name has being blacklisted; and

(d) when asked why Boh Chin Chye's name was used instead of his immediate family members such as brothers, wife, sisters his response was because Boh Chin Chye is his good friend.

Second Accused

[39] The second accused testified very briefly as follows:

(a) he was introduced to the first accused by SP17;

(b) he explained that the registered owner is Boh Chin Chye whereas the beneficial owner is the first accused;

(c) he testified that Anjaniman (SD3) is the one who successfully found the purchaser of the said lots;

(d) he confirmed receiving more than RM2.5 million as a commission for the sale of the said lots;

(e) he confirmed the payments made to the recipients as per the 12 charges including his wife and son;

(f) he did not dispute receiving the monies back which were paid to his wife.

[40] What is most pertinent to note is that both the first and the second accused did not dispute or challenged that they had received the sums of monies as per the charges.

[41] In short the defence of both the accused is as follows:

(a) both the accused had no knowledge or reason to believe that the titles to the said lots had been forged;

(b) reasonable steps were taken to ensure that the said lots were not of an illegal activity namely:

(i) repeated searches had been conducted by SP6, second accused, SP4, SD3 at the PTG Selangor to determine the ownership of the said lots;

(ii) experienced lawyers (SP4 and SP6) and property agents (SP17 and SD3) were engaged; and

(iii) estate agent (SD3) confirmed the titles to said lots;

(c) the investigation into the predicate and AMLA offences are incomplete; and

(d) the prosecution has failed to call material witnesses.

[42] On the issue that the titles of said lots were forged both the accused contended that the prosecution had failed to prove that both the accused had knowledge or reason to believe that the titles of the said lots were forged and thereby they had no knowledge that the proceeds obtained from the sale of the said lots are proceeds from an unlawful activity. I disagree that both the accused had no knowledge or reason to believe that the titles of the said lots were forged. The evidence against them is overwhelming and includes the following:

(a) it was the first accused who had obtained Boh Chin Chye's identity card for the procurement of the said lots in other words the first accused had access to Boh Chin Chye's identity card;

(b) it was first accused who had used Boh Chin Chye's identity card to open a bank account in CIMB Bank at Telok Gading without Boh Chin Chye's consent or knowledge;

(c) the reason given by the first accused why he had used Boh Chin Chye's identity card was because the first accused was a bankrupt and that Boh Chin Chye was his good friend is not acceptable as there is not an *iota* of evidence to show the first accused is a bankrupt;

(d) the first accused said he paid RM30,000 to a person called Richard to procure the said lots. Richard was not called as a witness and first accused could not explain properly who this Richard is other than saying that Richard had lent him a sum of money between RM50,000 to RM80,000 at Genting Highlands;

(e) the first accused invested RM30,000 for the said lots but within a short period of time is able to sell the said lots for RM 2.5 million;

(f) both the accused received RM9 million for the sale of the said lots to B & G Intertrade Sdn Bhd;

(g) the market valuation of the said lots was as follows:

	Lot 22203	Lot 22204
Industrial land 'As is' value Forced Sale Value (Industrial)	RM 11,426,000 RM 6,537,000 RM 9,513,000	RM 11,416,000 RM 6,531,000 RM 9,144,000
Forced Sale Value (Agriculture)	RM 5,229,000	RM 5,225,000

(h) Both the accused by selling the said lots way below the market valuation points to an inference that they knew that the amount of RM9 million is proceeds of an unlawful activity;

(i) both the accused who are merely land brokers or introducers received RM9 million whereas Boh Chin Chye who is the registered legal owner merely received RM15,000 in cash;

(j) it is illogical and nonsensical that Richard would not have procured the land for himself if it was only for RM30,000 and could thereafter be sold for millions of ringgit;

(k) the first accused had used Boh Chin Chye's name instead of his own name or close family members because of the fact that Boh Chin Chye is a simpleton as testified by SP29;

(l) SPS's evidence that if the second accused as a broker can make much more money than the owner of the land then the owner of the land must be a sick man and SD3 found this fact to be extremely amusing and full of disbelief; and

(m) the act of the second accused in disguising the unlawful proceeds and cleaning it by putting it into his wife's and son's companies accounts and thereafter collecting the said monies back from them.

[43] I accept the evidence of the prosecution witnesses SP1, SP8, SP2, SP3, SP7, SP15, SP5, SP6 and SP4 and accept them as witnesses of truth. They appeared to me as credible witnesses and without any motive.

[44] The first accused on the other hand appeared to me to be an untruthful witness. During examination in chief he appeared that he could read and understand the documents referred to him but in cross examination he appeared or pretended not to be able to read anything in English and Bahasa Melayu language except the numbers.

[45] During the examination in chief the first accused explained that Boh Chin Chye was not present at the initial meeting as Boh Chin Chye had to attend to other matters when the second accused and SP6 offered RM2.5 million but during cross examination he agreed that Boh Chin Chye was present when the RM2.5 million offer was made. In any event the initial offer of RM3 million initial offer price was never put during the prosecution's case.

[46] On the one hand the first accused testified that he was the owner of the said lots as Boh Chin Chye had merely allowed his name to be used and so he decided on all matters relating to the said lots. On the other hand when at Syed Ibrahim's office he left Boh Chin Chye to attend to all the matters relating to the sale and purchase of the said lots and he waited outside. Obviously the first accused's conduct and evidence is not consistent to the

A fact that he was the rightful owner of the said lots. It is the first accused evidence that he brought Boh Chin Chye to Syed Ibrahim's office but when at the office he chose to conveniently remain outside the office as though not interested to know what was happening to the said lots even though he claimed to be the
B beneficial owner. In short, it appeared to me that the first accused was really unsure of this role as to whether he was the owner or Boh Chin Chye was the owner of the said lots. In the light of SP24's evidence that Boh Chin Chye is a simpleton I accept Boh Chin Chai's statement in exh. P71 that he did not at all go to
C Syed Ibrahim's office at all. In this respect I also accept SP24's evidence that Boh Chin Chye would not know that his identity card was made used of by SD1 at Syed Ibrahim's office just as it was made use of at the PTG and the CIMB bank at Telok Gading. It is the first accused's evidence that Boh Chin Chye
D signed the sales and purchase agreement at Syed Ibrahim's office and for all that Boh Chin Chye was only paid the deposit of RM15,000. According to the first accused even the amount of RM15,000 that was paid to Boh Chin Chye was told to him by the first accused does not make sense.

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[47] When confronted during cross examination by the learned DPP that out of the RM2.5 million the first accused did not give a single cent to Boh Chin Chye, the first accused for the first time said that he gave RM100,000 to Boh Chin Chye. When pressed
F further the first accused failed to produce an *iota* of evidence to show that he had indeed given the RM100,000 to Boh Chin Chye.

[48] When asked how the price of RM2.5 million is reasonable, the first accused answer was nonsensical, in that he said that 'saya
G tak jual tanah secara mahal kerana saya sendiri sudah untung'. (I do not sell the land at an expensive price because I have already profited).

[49] Despite disagreeing to the learned DPP it was obvious that
H the first accused looked very worried when he was confronted that it is unreasonable to sell the said lots at a price of RM2.5 million when the initial investment was only RM30,000. The demeanour of the first accused were in question.

I

[50] On the issue that reasonable steps were taken to ensure the status of said lots I am of the view that the repeated searches made at the PTG Selangor does not assist the defence simply because the particulars in the computer were already falsified and any person who makes subsequent searches will be given the false particulars. To my mind the repeated searches made by SP3, SP4, SD6 and the second accused are all irrelevant because to begin with both the accused knew or had reason to believe that the titles to said lots were already forged. Repeated searches do not make it right, a wrong which was already committed.

[51] The learned counsel for the accused submitted at length that the investigation into the serious offence and the AMLA offence is incomplete. I disagree. What the prosecution is required to prove in this case is that the proceeds were from an unlawful activity. In this respect what the prosecution is required to prove is the commission of a serious offence. There is no requirement to prove that any person has been convicted of such an offence. In the present case there is overwhelming evidence to prove that the two title deeds had been forged and the forged title deeds had been dishonestly used as genuine by both the accused when they knew or had reason to believe to be forged documents. As for the AMLA offences SP23 explained with supporting evidence on the money trail investigation conducted. SP23 has successfully traced the money trail and which resulted in the framing of the charges against both the accused. As such I do not agree that the investigation into the serious offence and the AMLA offence is incomplete.

[52] The learned counsel for the accused also submitted that the prosecution has failed to call Superintendent Latt Mazura, Boh Chin Chye and Yeo Tick Lim. Superintendent Latt Mazura, who was merely co-ordinating the investigation of the predicate offence to my mind is not a material witness. The evidence relating to the investigation of the predicate offence was adequately given by SP3 and SP7. In any event Superintendent Latt Mazura was offered to the defence, at the close of the prosecution's case. The non calling of Superintendent Latt Mazura has not resulted in a gap in the prosecution's case and there is no suppression of evidence on the part of the prosecution. On the non calling of Yeo Tick Lim, a co-signatory of the Bumiputra-Commerce Bank Berhad

account together with Boh Chin Chye is a non issue and therefore irrelevant to this case. In any event Yeo Tick Lim is not a material witness in this case.

[53] On the other hand I agreed with the learned counsel for the defence that Boh Chin Chye is a material witness in this case. However I am satisfied that the prosecution had taken all reasonable steps to trace Boh Chin Chye but had failed. In any event, the first accused during his sworn evidence also similarly informed the court that Boh Chin Chye cannot be found. As such I cannot invoke the adverse presumption against the prosecution for failure to call Boh Chin Chye as a prosecution witness.

[54] Having evaluated the evidence of the defence I found the defence to be a bare denial, illogical, contradictory and an afterthought. I found it illogical for the first accused to procure the said lots from Richard for a mere RM30,000 and subsequently to sell it at RM2.5 million to the second accused and SP6 and thereafter they were sold at RM9 million to B & G Intertrade. If it was really the case Richard would have procured the said lots for himself and made the millions. The defence that both the accused had no knowledge that the titles of the said lots were forged to my mind amounted to nothing more than a bare denial.

[55] What I found most glaring in the case for the defence is that there was a continuous effort of improving the defence case resulting in giving rise to the defence of an afterthought. The initial testimony of the first accused showed he played the role of a broker for the said lots but subsequently changed his role to that of a beneficial owner of the said lots alleging that Boh Chin Chye merely agreed to allow his name to be used as the legal owner of the said lots. The evidence during the prosecution's case only showed a sum of RM15,000 paid to Boh Chin Chye. However during the defence case the first accused said that he paid RM100,000 to Boh Chin Chye. However there was not an *iota* of evidence to support the payment of RM100,000 to Boh Chin Chye.

[56] The second accused in his defence explained that he was introduced to the first accused and the said lots by SP17. However none of these facts were put to SP17 during the prosecution's case. It was also the first time that the second

accused told the court of his negotiation skills that the said lots were first offered at a price of RM3 million and how he negotiated the price to RM2.5 million. None of this was put during the prosecution's case to SP17 or even to the first accused.

[57] The calling of SD3 by the defence was a major disaster to the defence. During the cross examination of SD3 I found blatant contradictions between the evidence of the second accused's and SD3. The second accused testified that SD3's role was to find a buyer of the said lots and SD3 succeeded in finding the buyer. However SD3 totally denied this. SD3 also denied that his company Island Peninsula Consultant had joined together (bergabung) with the second accused to sell the said lots. SD3 also denied representing the second accused or acted as a purchaser or intermediary in respect of the said lots. Having observed SD3 giving evidence I found him to be a credible witness. He had no reason to lie in court and in fact he was called to testify by the defence themselves. To my mind SD3's evidence strengthened the case for the prosecution when he testified that where the broker makes a commission more than the price of the land then the vendor must be a sick person. He maintained this stand during his re-examination by the learned counsel for the defence.

[58] After a careful evaluation of all the evidence in this case, I have asked myself if the defence has raised any reasonable doubt in the case for the prosecution and the answer is in the negative. The first and second accused has failed to raise any reasonable doubt. On the other hand I was satisfied that the prosecution had succeeded in proving all the charges against the first and second accused beyond all reasonable doubt.

[59] Accordingly I found both the first and second accused guilty of all the charges and they were accordingly convicted of all the charges faced by them.

Sentence

[60] Before passing sentence I had considered carefully the mitigation of both the first and the second accused. The first accused mitigated as follows:

A (a) aged 52 years old;

(b) has a non working wife;

(c) has three children aged 19, 15 and 14 years old;

B (d) has an adopted child aged 14 years old who is a special child because he suffers from kidney failure and has low IQ;

(e) both his parents have passed on;

(f) has no previous offences;

C

(g) has high blood pressure which require medication;

(h) has family commitments as he is the sole bread winner of the family; and

D

(i) was unlucky for having met and known a male by the name of Richard and being illiterate and he got influenced in relation to the two said lots.

[61] The second accused pleaded as follows:

E

(a) aged 59 years old;

(b) has a wife and an ex wife;

(c) has a child from his previous wife and four children with his

F present wife;

(d) his children who are still studying at the University or at school;

G (e) takes care of his 80 years old mother;

(f) this is his first offence;

(g) was unlucky because he could not differentiate between the two genuine land titles even though he made searches at the

H PTG; and

(h) suffers from high blood pressure and requires medication.

I

[62] It was also the mitigation of both the accused that:

(a) they had waited very long for the disposal of this case causing them to suffer 'anxiety of uncertainty' since 2007. In other words they had the charge hanging over their heads for a period of about seven years. This by itself is a punishment for them;

(b) Both the accused had also co-operated with the investigating officer;

(c) The accounts of SP6 and SD3 have been frozen and as such there was no loss suffered since the monies have been recovered from the receivers;

(d) Both the accused depended on the information and the searches at the PTG; and

(e) These offences do not involve injury or violence to anyone.

[63] In short both the accused pleaded that they be released on a bond under s. 294 of the Criminal Procedure Code. They also pleaded for a fine to be imposed and not a custodial sentence.

[64] On the other hand the prosecution pressed for a heavy sentence to be imposed on both the accused on the following reasons:

(a) offences committed are serious which carries a maximum of five years term of imprisonment and RM5 million fine;

(b) both the accused were found guilty and is not a case of plead guilty;

(c) being sole breadwinners is not a mitigating factor;

(d) the first accused benefited a sum of RM2,434,000 and the second accused received RM2,630,000 and the monies remains untraced. Both the accused do not deny receiving the said monies;

(e) the offences committed were planned carefully, that is they are pre meditated offences;

A (f) the fact that there is no injury or no violence involved is not a mitigating factor;

(g) these offences are not easy to detect or proven; and

B (h) the purchaser of the land has taken civil action against PTG Negeri Selangor to recover amongst others the RM9 million for both the said lots.

[65] In considering the proper sentence to be imposed in this case I considered the rights of the victims and the rights of the C accused. In this regard I have considered the aims of sentencing which are retribution, deterrence, rehabilitation and prevention.

[66] In this case it cannot be denied that the first accused had received RM2,434,000 and the second accused received D RM2,630,000 and the total loss to the victims is around RM9 million. In this respect an order under s. 294 of the Criminal Procedure Code or a mere fine would not satisfy the aims of sentencing namely retribution, deterrence, rehabilitation and prevention. In fact it will amount to a very good business for the E first and second accused if I were to merely impose an order under s. 294 of the Criminal Procedure Code or a simple fine.

[67] The factors that the first accused is 52 years, the second accused is 59 years, has school going children, the parents have F passed on or are old age, no previous offence, suffering from high blood pressure, are sole breadwinners are in my opinion not mitigating factors in this case as the first and second accused should have thought about all these factors before committing the offences.

G **[68]** The fact that the first accused was unlucky to have met and known Richard, is illiterate and got involved with the two title deeds cannot be accepted because the evidence before me very clearly disclose that the first accused is involved in the offence of "fraudulently using a forged document as genuine" an offence H under s. 471 of the Penal Code. The two land titles are no doubt valuable security which has been forged within the meaning of s. 467 of the Penal Code. The photograph of the first accused and Boh Chin Chye's identity card which was used in the transaction involving the land deals shows the involvement of the I first accused in the predicate scandal. In any event "Where in the

world can the first accused by investing a mere sum of RM30,000 make a whooping profit of RM2.5 million within days?" Based on the objective factual circumstances of the case it is very obvious that the first accused knew that the land titles are forged and the RM2.5 million proceeds arose out of the unlawful activities.

[69] On the other hand the objective factual circumstances of the case very clearly point to the fact that the second accused disguised the dirty money and cleaned it by putting it into other accounts before collecting it back. The second accused's actions falls typically within the money laundering terms of placement layering and integration of the dirty money. The repeated searches at the land office was just a cover up to show that he was doing the right thing when all along he knew or had reason to believe that the land titles cannot be true and were a result of unlawful activities.

[70] I am fully mindful of the need to combat money laundering. Successful money laundering means that the criminal activity actually does pay off. This success encourages offenders or would be offenders to continue their illegal activities because they get to spend the profits on big cars, houses and luxuries with no repercussions. This leads to more fraud, law enforcement resources stretched beyond their means and a general loss of morale on the part of legitimate business people who do not break the law. In short consequences of money laundering include the following:

(a) undermine the business and financial system and in this case includes the administration of land in our country;

(b) expand crime as it enable criminals to use and deploy their illegal finds;

(c) criminalise society whereby offenders can increase profits by reinvesting the illegal funds in business; and

(d) reduce revenue and control and undermine public policies with false notions of income and the economy creating false demand and making public officials to adjust the economic policies and all of that money may suddenly disappear without predictable economic adjustments.

[71] In passing sentence I had also considered the public interest of the case including the following factors:

(a) the investigation and prosecution of this case involve voluminous evidence put together by the investigating and prosecuting officers time and public funds;

(b) section 4(1) of the AMLA does not state that sentences of imprisonment must only be given if the offence involved elements of violence;

(c) the ill gotten monies that had been laundered by both the accused are of a huge magnitude and not a single cent recovered from them.

(d) the offence committed by both the accused cannot be sufficiently dealt with by an order under s. 294 of the Criminal Procedure Code or a fine;

(e) looking at the nature of the offence that is obtaining illegal monies from forgery of land titles is a very serious offence. These act would undermine public confidence in the authorities handling land matters and also investors confidence. No registered land owner would feel safe if these offences are not adequately and effectively punished;

(f) public interest is a paramount consideration and would prevail over the fact that the first and second accused are first offenders;

(g) this kind of offence is not easy to detect and not easy to prove. It is a white collar crime and the first and second accused had premeditated the execution of their fraudulent intentions and acts. The second accused tried to cover his illegal tracks by making repeated searches at the PTG and disguising his ill gotten monies into his wife's and son's bank accounts. He had hoped to launder his ill gotten monies; and

(h) the punishment meted out must serve to create a conducive and safe environment for the investors and the business sector.

[72] Accordingly, I have passed the following sentence:

First Accused

First Charge : five years imprisonment, fine of RM1 million in default one year imprisonment and a penalty under s. 55(2) RM2,000,000 plus warrant of levy under s. 283(1)(b)(iii) and (iv) of the Criminal Code Procedure and if not executed within one year then in default one year imprisonment;

Second Charge : two years imprisonment and penalty under s. 55(2) RM184,000 plus warrant of levy under s. 283(1)(b)(iii) and (iv) of the Criminal Procedure Code and if not executed within one year then in default one month imprisonment;

Third Charge : six months imprisonment and penalty under s. 55(2) RM10,000 plus warrant of levy under s. 283(1)(b)(iii) and (iv) of the Criminal Procedure Code and if not executed within one year then in default one month imprisonment; and

Fourth Charge : two years imprisonment and penalty under s. 55(2) RM240,000 plus warrant of levy under s. 283(1)(b)(iii) and (iv) of the Criminal Procedure Code and if not executed within one year then in default six months imprisonment.

Second Accused

First Charge : one year imprisonment and penalty under s. 55(2) RM50,000.00 plus warrant of levy under s. 283(1)(b)(iii) and (iv) of the Criminal Procedure Code and if not executed within one year then in default three months imprisonment;

A	Second Charge	:	six months imprisonment;
	Third Charge	:	six months imprisonment;
	Fourth Charge	:	two years imprisonment and penalty under s. 55(2) RM150,00 plus warrant of levy under s. 283(1)(b)(iii) and (iv) of the Criminal Procedure Code and if not executed within one year then in default six months imprisonment;
B			
C	Fifth Charge	:	six months imprisonment;
	Sixth Charge	:	six months imprisonment;
	Seventh Charge	:	six months imprisonment;
D	Eighth Charge	:	1 1/2 years imprisonment and penalty under s. 55(2) RM100,000 plus warrant of levy under s. 283(1)(b)(iii) and (iv) of the Criminal Procedure Code and if not executed within one year then in default six months imprisonment;
E			
	Ninth Charge	:	five years imprisonment, fine of RM500,000 in default six months imprisonment and penalty under s. 55(2) RM1,330,000 plus warrant of levy under s. 283(1)(b)(iii) and (iv) of the Criminal Procedure Code and if not executed within one year then in default one year imprisonment;
F			
G	Tenth Charge	:	five years imprisonment, fine of RM500,000 in default six months imprisonment and penalty under s. 55(2) RM1,000,000 plus warrant of levy under s. 283(1)(b)(iii) and (iv) of the CPC and if not executed within one year then in default one year imprisonment;
H			
	Eleventh Charge	:	one year imprisonment; and
	Twelfth Charge	:	three months imprisonment.
I			

[73] I have ordered all the sentences of imprisonment to run concurrently with effect from the date of sentence. I have also ordered the penalty ordered under s. 55(2) of AMLA to be recovered by way of a warrant for the levy of the amount by distress and sale of any property belonging to the accused persons. I have also made an ancillary order that both the accused are not to dispose any property to defeat the warrant for the levy under s. 283(1)(b)(iii) of the Criminal Procedure Code.

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